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IN THE

Supreme Court of the United States

OCTOBER TERM, 1953

ASSOCIATION OF WESTINGHOUSE SALARIED EMPLOYEES

Petitioner

v.

WESTINGHOUSE ELECTRIC CORPORATION

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Third Circuit, entered in the above entitled case on January 28, 1954.

OPINIONS BELOW

The opinion of the District Court (R. 97a) is reported in 107 F. Supp. 692. The opinion of the Court of Appeals (R. 113) is reported in 210 F. 2d 623.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on January 28, 1954. (R. 131). The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

QUESTION PRESENTED

Section 301 of the Taft-Hartley Act grants jurisdiction to the Federal District Courts over all "suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce. . . ." May a union, under this provision, sue in a federal district court for breach of that part of its collective bargaining contract with an employer which governs the payment of wages to the employees?

STATUTE INVOLVED

Section 301 of the Taft-Hartley Act, 29 U.S.C. 185, 61 Stat. 156, provides, in pertinent part, as follows:

> "Sec. 301 (a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.
>
> (b) . . . Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. . . ."

STATEMENT

1. *Facts Alleged in the Complaint.* Petitioner (hereinafter called the union) is a labor organization representing certain employees of the Westinghouse Electric Corporation (hereinafter called the company) at the company's East Pittsburgh and Homewood, Pa. plants. Although the employees represented by the union are all paid on a salaried, rather than an hourly, basis, they are employees within the meaning of the Labor-Management Relations Act, 1947, and are engaged in an industry affecting commerce, as those terms are defined by the Act. 29 U.S.C. §§ 141, 152. (R. 2a, 3a).

On November 1, 1950, the union entered into a collective bargaining agreement with the company, prescribing the wages and other terms and conditions of employment for all employees represented by the union. (R. 4a). In April, 1951, during the term of the contract, the company—contrary to its usual practice—deducted from the monthly salaries of some 4,000 employees represented by the union an amount which would be the equivalent of eight hours' pay, if the employees were paid by the hour, because these employees missed one day's work. (R. 7a). The union claimed that this action violated the collective bargaining agreement and, after exhausting all of the steps of the grievance procedure (R. 8a), brought suit in the United States District Court for the Western District of Pennsylvania.

2. *The District Court Proceedings.* The suit was filed by the union on its own behalf and on behalf of the employees whom it represented. Jurisdiction was claimed under the provisions of Section 301 (a) of the Taft-Hartley Act, which gives to the federal district courts jurisdiction over suits for breach of contract between employers and unions representing employees in an industry affecting commerce. (R. 2a). The relief requested was a declaration of rights under the collective bargaining contract with respect to the matter in dispute, an accounting by the company as to each of the employees from whose salary deduction had been made, and a judgment in favor of such employees for the amounts due. (R 8a).

The company filed a motion to dismiss. (R. 97a). The motion contained three grounds:

(1) The union was not the real party in interest and hence was not a proper party plaintiff;

(2) The Court lacked jurisdiction over the subject matter;

(3) The complaint failed to state a claim against the defendant upon which relief could be granted.

The District Court rejected the first two grounds urged. (R. 100a-101a). On examination of the facts alleged in the complaint, however, it found that in the absence of affirmative averments in the complaint as to the specific causes of the absences of the employees no cause of action was stated. (R. 106a). It therefore dismissed the complaint. (R. 107a).

The union appealed to the Court of Appeals for the Third Circuit.

3. *The Proceedings in the Court of Appeals.* Argument in the Court of Appeals was first heard by a panel of three judges. The case was then set down for re-argument before the court *en banc.* (R. 112). On January 28, 1954, the court, by a 4 to 3 vote, decided that the order of the District Court should be vacated and that the complaint should be dismissed for lack of federal jurisdiction. The sole ground was that, "assuming that the plaintiff's construction of the collective contract is correct" (R. 118), the failure to pay to individual employees the wages specified in the collective contract did not constitute, in law, a violation of that contract within the meaning of Section 301.

The majority opinion, per Staley, J., came to this conclusion by way of an analysis of the various legal theories which have been used to describe the tripartite relationship created by a collective bargaining contract. (R. 116 ff.). None of these theories were found to be satisfactory and the court proceeded to enunciate its own. Under this theory (called "eclectic" by the court) the collective bargaining contract was regarded as comprising two types of provisions: (1) those, such as union shop or checkoff clauses, providing benefits to the union; and (2) those, such as the wage clause, governing compensation and other benefits for the employees. With respect to the first kind of provision, the court conceded, the rights granted arise out of the collective bargaining contract and "run in favor

of the union". (R. 121). With respect to a provision dealing with a subject such as wages, which is what is involved here, however, the court argued that the collective bargaining contract itself only obligates the employer "to include, as a term of each individual contract of hire, a promise to pay the salaried employee for the type of absence involved here." (R. 118-119).

It followed from this analysis, the court said, that the failure to pay the individual employees the wages specified in the collective bargaining contract constituted a violation only of the several contracts of hire between the individuals and the employer, and not a violation of the collective bargaining contract between the union and the employer. Since § 301(a) grants to the federal district courts jurisdiction only over suits for violation of contracts between unions and employers, the claim here was not one over which a federal court has jurisdiction.

> ". . . we think that, if there was a violation of contract here, it was a violation of the individual employment contract and thus, there is no federal jurisdiction since Section 301(a) cannot be invoked." (R. 119).

In reaching this conclusion, the majority opinion in the Court of Appeals expressly recognized, and disagreed with, the contrary holding of the Court of Appeals for the Sixth Circuit in *American Federation of Labor* v. *Western Union Telegraph Company*, 179 F. 2d 535 (C. A. 6, 1950). It noted also a number of other cases in which jurisdiction in this kind of case was assumed "*sub silentio*" or "by mere *ipse dixit* statement." (R. 121).

The three dissenting judges, in an opinion by Judge Hastie, argued that Section 301(a) of the Taft-Hartley Act and the provision in Rule 17(a) of the Federal Rules of Civil Procedure that a party who has made a contract for the benefit of another may sue in his own name, without joining the third party beneficiary, gave the District

Court jurisdiction at least to render a judicial determination of the rights of the employees under the terms of the collective bargaining contract. Since the majority did not reach the point, they expressed no opinion as to whether a money judgment could be entered without the joinder of the individual employees. But they did indicate their agreement with the trial court as to the inadequacy of the facts stated in the complaint to support the cause of action.

SPECIFICATION OF ERRORS TO BE URGED

The Court of Appeals erred:

1. In holding that the failure of an employer to pay the wages specified in a collective bargaining contract does not constitute a violation of that contract.

2. In holding that Section 301 of the Taft-Hartley Act does not give to unions a federal cause of action for breach of the provisions in a collective bargaining contract calling for the payment of wages to the employees.

3. In dismissing the complaint for lack of jurisdiction.

REASONS FOR GRANTING THE WRIT

1. The decision of the Third Circuit here is squarely in conflict with decisions of the Courts of Appeal for the Fourth and Sixth Circuits and is probably in conflict with the views of the Seventh and Tenth Circuits.

The conflict with the Sixth Circuit was acknowledged by the court below. The majority opinion referred to the decision in *American Federation of Labor* v. *Western Union Telegraph Co.*, 179 F. 2d 535 (C.A. 6, 1950), and said: "We are, with deference, forced to disagree." (R. 121.) It did not mention the additional *contra* decision by the Court of Appeals for the Sixth Circuit in *Milk and Ice Cream Drivers Union* v. *Gillespie Milk Products Corp.*, 203 F. 2d 650 (C.A. 6, 1953).

In the *Western Union* case, a union brought suit against an employer, alleging that the employer had violated its

collective bargaining agreement by refusing to pay a pension to an employee named Mae Hart. The union alone brought the suit. It asked for a judgment declaring that the individual employee was entitled to a pension and for an injunction against the company restraining it from breaching the provisions of the pension agreement with respect to Mae Hart or any other employee represented by the union.

The defendant company moved to dismiss, as the defendant company moved here, on the ground that "the Court lacks jurisdiction of the subject matter." The district court granted the motion. On appeal, the Court of Appeals of the Sixth Circuit was thus faced with the same jurisdictional question presented in this case, arising on a motion precisely the same as that sustained by the Court of Appeals in this case. The decision of the Sixth Circuit, reversing the District Court and holding that Section 301 of the Taft-Hartley Act gave the federal courts jurisdiction over the union's suit, is thus directly contrary to the decision of the Court of Appeals in this case.

Unnoticed by the court below was the conflict between its decision here and a decision of the Court of Appeals for the Fourth Circuit. In *Textile Workers Union* v. *Arista Mills Co.*, 193 F. 2d 529, (C. A. 4, 1951), the union brought suit under Section 301(a), alleging that the employer had breached the collective bargaining agreement by refusing to bargain with the union and by failing to give effect to the seniority rights of certain employees. The Court of Appeals held that the subject matter of the union's first grievance, i.e. that the employer had refused to bargain with it, was within the exclusive jurisdiction of the National Labor Relations Board. With respect to the second claimed breach, however, the court of appeals held flatly that the District Court did have jurisdiction.

> ". . . Two questions are presented for our consideration: (1) whether the District Court had jurisdiction

of the cause of action alleged, and (2) if so, whether that court rendered the correct decision. We think that, in so far as the complaint alleged breach of contract on the part of defendant with respect to the rights of the former employees, there was jurisdiction in the District Court to hear and decide the case . . ." (193 F. 2d 529, 532-533.)

In addition to these square holdings by the Fourth and Sixth Circuits on the precise point decided below, there are also decisions in the Seventh and Tenth Circuits which appear to assume, contrary to the holding of the court below, that unions may sue under Section 301(a) for failure of the employer to grant to employees the benefits specified in a collective bargaining agreement. *Mercury Oil Refining Co.* v. *Oilworkers International Union*, 187 F. 2d 980 (C. A. 10, 1951); *United Protective Workers of America* v. *Ford Motor Co.*, 194 F. 2d 997 (C. A. 7, 1952).[1]

2. The issue here presented is an important issue of federal law which should be decided by this Court. The decision of the court below, limiting federal jurisdiction over contract suits by unions to those in which a breach of an obligation to the union as such is alleged, erroneously deprives the federal courts of a major portion of the jurisdiction specifically granted to them by Section 301 (a).

There are a total of 17 reported decisions by the federal courts of appeals in suits brought under Section 301(a). Of these 17, 8 were suits by employers.[2] One was a suit by

[1] In the *Ford Motor Co.* case the employee whose rights under the collective bargaining agreement were in question was joined as a plaintiff. The Court held that only the union was a proper plaintiff under Section 301. In the particular case however there was also diversity of citizenship between the employee and the defendant company. The Court held that the individual employee's claim, over which the district court had jurisdiction because of diversity could be joined with the union's claim on his behalf over which the court held that it had jurisdiction because of Section 301.

[2] *Hamilton Foundry & Machine Co.* v. *International Molders & Foundry Workers Union of North America et al.* 193 F. 2d 209

individual employees.[3] Of the 8 cases in which the suit was filed by a union, seven involved alleged violations of collective bargaining contract provisions relating to benefits payable to the employees.[4] In only one case[5] did a union sue exclusively for breach of a provision in a collective bargaining contract which provided benefits to the union as such.

These statistics merely underline what is obvious to any one familiar with the collective bargaining process. Contrary to the view of the Third Circuit, a union's function

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(C.A. 6, 1951); *International Union United Furniture Workers of America et al* v. *Colonial Hardwood Flooring Co., Inc., (United States, Intervener)* 168 F. 2d 35 (C.A. 4 1948); *Isbrandtsen Co., Inc.* v. *Local 1291 of International Longshoremen's Assn*, 204 F. 2d 495 (C.A. 3, 1953); *Markel Electric Products, Inc.* v. *United Electrical, Radio & Machine Workers of America, U.E. et al.* 202 F. 2d 435 (C.A. 2, 1952); *Paterson Parchment Paper Co.* v. *International Brotherhood of Paper Makers et al*, 191 F. 2d 252 (C.A. 3, 1951); *Shirley-Herman Co., Inc.* v. *International Hod Carriers, Building & Common Laborers Union of America, Local Union No. 210*, 182 F. 2d 806 (C.A. 2, 1950); *Tenney Engineering, Inc.* v. *United Electrical Radio & Machine Workers of America, (U.E. Local 437)*, 207 F. 2d 450 (C.A. 3, 1953); *United Electrical, Radio & Machine Workers of America et al.* v. *Oliver Corp.*, 205 F. 2d 376 (C.A. 8, 1953).

[4] *Schatte et al.* v. *International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of United States and Canada et al.*, 182 F. 2d 158 (C.A. 9, 1950).

[5] *American Federation of Labor* v. *Western Union Telegraph Co.*, 179 F. 2d 535 (C.A. 6, 1950); *Bakery & Confectionery Workers International Union, Local No. 492* v. *National Biscuit Co.*, 177 F. 2d 684 (C.A. 3, 1949); *Mercury Oil Refining Co.* v. *Oil Workers Union, CIO et al*, 187 F. 2d 980 (C.A. 10, 1951); *Milk and Ice Cream Drivers and Dairy Employees Union, Local No. 98 et al.* v. *Gillespie Milk Products Corp.*, 203 F. 2d 650 (C.A. 6, 1953); *Studio Carpenters Local Union* v. *Loews, Inc.*, 182 F. 2d 168 (C.A. 9, 1950); *Textile Workers Union of America, CIO* v. *Arista Mills Co.*, 193 F. 2d 529 (C.A. 4, 1951); *United Protective Workers of America* v. *Ford Motor Co.*, 194 F. 2d 997 (C.A. 7, 1952).

[6] *International Union of Electrical Radio & Machine Workers, CIO et al.* v. *United Electrical, Radio & Machine Workers of America et al.*, 192 F. 2d 847 (C.A. 6, 1951).

as the statutory collective bargaining representative of the employees does not end when it negotiates a document which prescribes their wages and other terms and conditions of employment.

Agreement on a contract is only the beginning of the labor-management relationship. The contract must be interpreted. Its rules must be applied to the myriad unanticipated situations which arise in the day to day operations of the plant. And, in this process, the union necessarily continues to act as the representative of the employees. It is the union which files and processes grievances concerning the interpretation and application of the agreement to particular employees and employment situations.* It is the union which negotiates the settlement of such grievances with the employer and which, where the contract provides for arbitration, is the contesting party in the arbitration proceedings. It is the union which, where these methods of solution do not suffice, naturally presses its interpretation of the contract in litigation.

This function of administering the employee side of the labor contract is, indeed, a part of the statutory obligation of a certified union. The National Labor Relations Board has held that a union which refuses to handle the contract grievances of individual employees who are in the unit represented, but who are not members of the union, violates the Act. *Hughes Tool Co.*, 104 NLRB No. 33, 32 LRRM 1010, 1011-1012 (1953):

> "We believe it is also clear that the presentation and adjustment of grievances is an activity which is subject to this requirement of non-discriminatory representation by the certified union. The prominent part which grievance handling plays in the representation of employees is readily apparent. As the Board has stated previously, 'Grievances are usually more than mere personal dissatisfactions or complaints of

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*See, e.g., the grievance procedure provisions in the contract here involved which are set forth at R. 40a-42a.

employees and their adjustment frequently involves the interpretation and application of the terms of a contract or otherwise affects the terms and conditions of employment not covered by a contract'.[18] The adjustment of grievances, viewed in the larger aspect, constitutes, to a great degree, the actual administration of a collective bargaining contract.

"The importance of grievance presentation and adjustment as a part of the representation of employees is also noted in the statute. Section 2(5) of the Act observes that a labor organization exists for the purpose among others, of dealing with employers concerning grievances.[19] Section 9 (a), as will be more fully discussed hereinafter, specifically recognizes the critical position grievance presentation and adjustment occupies in the relationship between the employee and the employer, the representative and the employer, and the employee and the representative. We find, therefore, in accord with the views of the Fifth Circuit Court that 'The handling of grievances . . . is part of the business [a certified union] has assumed and must be done with impartiality'.[20]

"[18] Bethlehem Steel Company, Shipbuilding Division, 89 NLRB 341 at 344 [25 LRRM 1564].

"[19] Section 2(5) states, in full, 'The term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.'

"[20] Hughes Tool Company v. NLRB, 147 F. 2d 69 [15 LRR Man. 852] (C.A. 5, 1945) . . ."

In *Hughes Tool* the contract provided for arbitration of differences as to the application of the contract. Here, where the contract does not require arbitration, we have a law suit to adjudicate such differences. In *Hughes Tool* the union was found by the Board to have a duty to present the employee's claims in arbitration without discrimination. But the Court of Appeals says here that the union

does not even have standing to present the employee's claims in court.

We believe that this conclusion would be in error even if the Court of Appeals were acting as a common law court of general jurisdiction. Even without specific statutory authorization for suit, we believe it would be error to utilize a rigid conceptual analysis to deny the existence of the union's legal, contractual, interest in obtaining performance of the contract which it—and it alone—is authorized by law to make on behalf of the employees.

But the Court of Appeals was not acting as a common law court of general jurisdiction. It was interpreting a Congressional mandate specifically authorizing suits between unions and employers for violation of collective bargaining agreements. The difficulties a common law court might have in adapting the traditional concepts of contract law to the institutional framework of the collective bargaining relationship are thus here eliminated.

It should, therefore, be immaterial whether the relationship between the employer, the union and the employees is termed an agency relationship, or a third party beneficiary relationship, or analogized to other arrangements such as those involving carriers or insurance companies (see *J. I. Case Co.* v. *NLRB*, 321 U.S. 332, 336 (1944)). Congress, in Section 301, did not enact a theory. It simply and unequivocally granted jurisdiction to the federal courts over all suits between unions and employers subject to the Act in which violations of collective bargaining agreements are involved. And it added to this grant of jurisdiction the further provision, in Section 301 (b), that unions could sue on behalf of the employees whom they represent. Surely language could not have been devised which would more explicitly cover the case at bar.

Nor does the legislative history contain any indication that when Congress used the words "violation of contracts between an employer and a labor organization" it meant

to refer only to parts of such contracts and to exclude all provisions relating to employee benefits. The provision in the House bill[1] which the final version "follows in general",[2] gave jurisdiction to the Federal Courts over "any action for *or proceeding involving* a violation of an agreement between an employer and a labor organization (emphasis added)". The Senate Committee Report said that the Senate bill "makes collective bargaining contracts equally binding and enforceable on both parties."[3] Nowhere in the reports or in the debate is there any suggestion that unions were to be given access to the federal courts only in the very small proportion of disputes with employers as to the meaning of collective bargaining contracts which involve benefits running directly to the union as such.

3. The importance of the question here presented, and the error of the Court of Appeals, is emphasized when it is recognized that Section 301(a) is far more than a bare jurisdictional grant: it creates the very substantive rights to be adjudicated when it is invoked.

The federal district courts, of course, cannot constitutionally be given jurisdiction over cases other than those in which there is diversity of citizenship or in which the cause of action rests on some federal right. Section 301(a), on its face, dispenses with the requirement of diversity of citizenship. Hence, it can be constitutional only if it is interpreted as being not merely a jurisdictional statute, but also a substantive statute creating a federal law governing breaches of labor agreements.

For this reason, the federal courts which have been presented with the issue have uniformly ruled that Section 301 does not merely provide a new forum for the enforcement

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[1] H.R. 3020 80th Cong. 1st Sess.

[2] House Conf. Report No. 510 on H.R. 3020, 80th Cong., 1st Sess., p. 65.

[3] Sen. Report No. 105, on S. 1126, 80th Cong. 1st Sess., p. 15.

of contracts theretofore enforceable solely in the state courts. On the contrary, it has been repeatedly held that:

> "the wording of the section and its place in the Taft-Hartley Act demonstrates that the section was designed to protect interstate and foreign commerce by creating a new substantive liability, actionable in the federal courts, for the breach of a collective bargaining contract in an industry affecting interstate or foreign commerce." *Schatte* v. *International Alliance*, etc. 182 F. 2d 158, 164 (C.A. 9, 1950).

Thus, in *Shirley Herman Co.* v. *Hod Carriers Union*, 182 F. 2d 806 (C.A. 2, 1950) the Court held that a substantive defense which was available to a union defendant under the law of the State of New York in a suit for breach of a collective bargaining agreement was irrelevant when the suit was brought under the provisions of Section 301. Similarly, in *Operating Engineers* v. *Dahlem Const. Co.*, 193 F. 2d 470 (C.A. 6, 1951) the union defendant urged that the labor contract, which it was being sued for breaching, was terminable at will under the law of Kentucky. The Court of Appeals for the Sixth Circuit rejected the contention out of hand, on the ground that federal law controlled in this field. And, in the *Schatte* case, *supra*, the Court of Appeals for the Ninth Circuit held that the provisions of Section 301, being substantive and not merely procedural, could not be applied to a breach of contract which occurred prior to its effective date. See also: *Wilson & Co.*, v. *Packinghouse Workers*, 83 F. Supp. 162 (S.D. N.Y., 1949); *Colonial Hardwood Flooring Co.* v. *United Furniture Workers*, 76 F. Supp. 493 (D. Md., 1948).

The Court of Appeals here held that Section 301 does not encompass violations by an employer of those provisions in a labor contract relating to employee benefits. It reached this conclusion by analyzing the substantive rights of the parties in a collective bargaining contract—a matter which, if the decisions cited above are correct, should be

determined as a question of federal law in light of all of the provisions of the federal act governing the relationship between unions, employers and employees. Furthermore, once reached, the conclusion constitutes much more than a limitation on federal jurisdiction. It constitutes a determination as to what substantive law will govern the administration of the particular provisions in a labor contract: those provisions in the contract which are concerned with the employees' wages and their terms and conditions of employment will be governed by state law; those which provide benefits to the union as such will be interpreted in accordance with federal law."[10]

This Court has said that Congress, in enacting Section 301, was "concerned with reshaping labor-management legal relations; and it was taking precise steps to declared and announced objectives." *Longshoremen* v. *Juneau Spruce Corporation*, 342 U.S. 237, 241. Surely there is nothing in the declared and announced objectives of Con-

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[10] The implications of this bifurcation were at least partially recognized by the Court of Appeals. It has been held that suits which can be filed under Section 301 and which are governed by federal law cannot be heard by state courts. *Fitzgerald* v. *Dictograph Products, Inc.*, 28 L.R.R.M. 2611 (N.Y. Sup. Ct., 1951). See also *Fay* v. *American Cystoscope Makers, Inc.*, 98 F. Supp. 278 (S.D., N.Y. 1951) and the statement of the Sixth Circuit with reference to a Section 301 suit that "Congress has occupied the field and closed it to state regulation," *Operating Engineers* v. *Dahlem Const. Co.*, *supra*, at p. 475.

The majority in the Court of Appeals in this case seemed to indicate their agreement with these decisions and, indeed, argued "that Congress intended to preempt to the federal courts litigation on collective bargaining contracts." (R. 123, fn. 16). The Court's principal holding, of course, would exclude from the preempted field of "litigation on collective bargaining contracts" all litigation relating to employee benefits. What if, as a matter of state law, a union would be regarded as having a substantive interest in the employee benefit provisions of a labor contract? Would this issue, having been determined as a matter of federal law, be foreclosed to contrary determination by the states?

gress which supports the interior division of every collective bargaining contract which is accomplished by the decision below.

CONCLUSION

For the reasons stated it is respectfully submitted that this petition for a writ of certiorari should be granted.

Respectfully submitted,

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